

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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U.S. DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

In Re:)	
)	Case No. 96-78369-W
Charles Vereen,)	
)	Chapter 7
Debtor,)	
)	
Robert F. Anderson, Trustee for the)	Adversary No. 98-80262-W
Chapter 7 Bankruptcy Estate of)	
Charles Vereen,)	
)	
Plaintiff,)	
)	
v.)	
)	JUDGMENT
Charles Vereen, Charles Clark Vereen,)	
Sonya Ann Vereen Clark, Melanie Renee)	
Vereen, Russell Wilson Vereen, Hamilton)	
Julian Vereen, Mark Groves, Garrett Sutton,)	
Nancy Lake, Vereen Joint Revocable Inter)	
Vivos Trust, East Cambridge Limited)	
Partnership and Five Star Management,)	
)	
Defendants.)	
)	

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Plaintiff's Motion for Summary Judgment against Charles Vereen and Five Star Management is granted.


THE HONORABLE JOHN E. WAITES
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
November 12, 1999

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FILED
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U.S. DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
369-W

Case No. 96-78369-W

Chapter 7

Adversary No. 98-80262-W

V.

ORDER

Defendants.

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DATE

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J.G.S.

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Based upon the pleadings filed in this matter and the arguments of counsel at the hearing on the Motion, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

This action was brought by Plaintiff, as the Chapter 7 Trustee of the bankruptcy estate of the Debtor, to recover fraudulent transfers made by the Debtor pursuant to 11 U.S.C. § 544 and S.C. Code Ann. § 27-23-10 (Law Co-op. Supp. 1998). At the time of the transfers, the Debtor was a defendant in a wrongful death lawsuit filed on October 8, 1993 in the United States District Court for the District of South Carolina (the "District Court Action"). The District Court Action was brought against the Debtor and others by Michael and Mary Steinke (the "Steinkes"), the parents of one of two young men killed at a bungee jumping attraction in August 1993. The Debtor was served with a copy of the Complaint in the District Court Action on October 13, 1993.

A little less than a year after the Complaint was filed, beginning in July 1994, the Debtor created Defendant Vereen Joint Revocable Inter Vivos Trust (the "Trust"), East Cambridge Limited Partnership (the "Partnership"), and Five Star Management ("Five Star"). In his §341 examination, Debtor verified that 100% of the stock in Heather Lakes, Inc. ("Heather Lakes"), Creative Development, Inc., Charles W. Vereen Homes, Inc., and Carolina Shores Realty, Inc. was transferred to the Partnership on August 2, 1994. Debtor is a 1% general partner of the Partnership. The Trust, created by the Debtor for his benefit, is the 98% limited partner of the Partnership.¹ Five Star owns the remaining 1% partnership interest.

¹ The Debtor's children, Defendants Charles Clark Vereen, Sonya Ann Vereen Clark, Melanie Renee Vereen, Russell Wilson Vereen and Hamilton Julian Vereen are to become beneficiaries of the trust upon the Debtor's death.



According to the Debtor's 1990 and 1991 Personal Financial Statements, the assets transferred to the Partnership had substantial value. After the transfers, however, the Debtor's assets were valued at only \$12,500.00. The attorney who prepared the transfer documents, Garrett Sutton ("Sutton"), testified in his deposition that the Debtor received no consideration for the transfers. Additionally, Sutton testified that the Debtor informed him the property transferred was worth "several hundred thousand dollars".

In his §341 examination, the Debtor testified that Sutton set up the Partnership to try to shelter his assets because he was staring a possible judgment in the face. The Debtor also testified that his rent and living expenses are paid from the Heather Lakes bank account despite the fact that Heather Lakes is now owned by the Partnership. Furthermore, the Debtor has failed and refused to provide information relating to the assets now owned by the Trust, Five Star, and the Partnership, although he has been ordered to provide such information by this Court.

On October 27, 1995, the Steinkes obtained a judgment for \$12,000,000 against the Debtor in the District Court Action.² Approximately one year later, on November 14, 1996, the Debtor filed this Chapter 7 bankruptcy case.

CONCLUSIONS OF LAW:

Rule 56(c) of the Federal Rules of Civil Procedure, made applicable under Bankruptcy Rule 7056, provides that summary judgment is appropriate when the pleadings, depositions, interrogatory answers, admissions, and affidavits show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

² The Steinkes' judgment was later reduced by the District Court to \$6,000,000, following remand of the case by the Fourth Circuit Court of Appeals.

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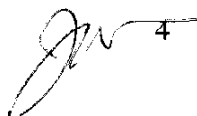
The party seeking summary judgment has the initial burden of showing the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Temkin v. Frederick County Comm'r, 945 F.2d 716, 718 (4th Cir. 1991), cert. denied, 112 S. Ct. 1172 (1992). Material facts are those identified by controlling substantive law as the essential elements of a claim or defense. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue of material fact is genuine when, "the evidence . . . create[s] [a] fair doubt." Ross v. Communications Satellite Corp., 759 F.2d 355, 364 (4th Cir. 1985). Plaintiff is entitled to summary judgment because the evidence in this case creates no doubt that Debtor made the conveyances at issue with the intent to defraud his creditors and that the conveyances were made for no consideration.

Section 27-23-10 of the South Carolina Code of Laws provides:

Every . . . conveyance of lands, tenements or hereditaments, goods and chattels or any of them . . . by writing or otherwise . . . which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken . . . to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

S.C. CODE ANN. §27-23-10(a) (Law Co-op. Supp. 1998).

In interpreting this statute, South Carolina courts have held that conveyances may be set aside under two conditions: (1) where a transfer is made without consideration and the grantor was indebted to the plaintiff at the time of the transfer and due to the transfer the grantor does not have sufficient assets to pay the indebtedness to plaintiff, and (2) where the transfer is made by the grantor with the actual intent of defrauding creditors where that intent is imputable to the

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grantee, even though valuable consideration was paid. Future Group, II v. NationsBank, 324 S.C. 89, 478 S.E.2d 45 (1996) (citing Gardner v. Kirven, 184 S.C. 37, 191 S.E. 814 (1937)); Coleman v. Daniel, 261 S.C. 198, 199 S.E.2d 74, 79 (1973).

In this case, both of these conditions have been satisfied. The first condition has been satisfied because Sutton's undisputed testimony establishes that the transfers were made for no consideration; and, due to the various transfers, the value of the Debtor's assets diminished significantly. The second condition has been satisfied because the Debtor himself admitted in his §341 examination that the transfers at issue were made to shelter his assets from the Steinkes. The Debtor's fraud should be imputed to the transferees because the Debtor himself controls the Trust, Five Star, and the Partnership; all of the transferee entities. Furthermore, even if the Debtor had not admitted his fraudulent intent in making the transfers, the Court could infer such fraudulent intent by considering the following "badges of fraud":

[T]he insolvency or indebtedness of the transferor, lack of consideration for the conveyance, relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, departure from the usual method of business, the transfer of the debtor's entire estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property.

Coleman, 199 S.E.2d at 79. Here, the Debtor has demonstrated not just one, but most of these badges of fraud thus allowing the Court to properly infer the Debtor's fraudulent intent. The following badges of fraud have been established by the Debtor's own testimony at his §341 Examination: (1) the Debtor transferred assets to entities he controlled; (2) the transfers were made while the District Court Action was pending against the Debtor; (3) the Debtor had over \$6,000,000.00 in assets before the transfers and only \$12,500.00 in assets after the transfers; (4)

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the Debtor had a positive net worth before the transfers and a negative net worth after the transfers; and (5) the Debtor continued to receive the income from the transferred assets after the transfers. Furthermore, the Debtor has failed and refused to disclose to the Plaintiff what assets are now owned by Five Star, the Trust, and the Partnership. Finally, as previously stated, the undisputed evidence establishes that the Debtor received no consideration for the transfers from any of the transferee entities. It is therefore

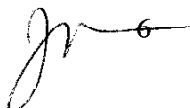
ORDERED that the Plaintiff's Motion for Summary Judgment be granted.

IT IS FURTHER ORDERED that the conveyances of 100% of the stock in Heather Lakes, Creative Development, Inc., Charles W. Vereen Homes, Inc., and Carolina Shores Realty, Inc. to East Cambridge Limited Partnership, Five Star Management, and the Vereen Joint Revocable Inter Vivos Trust are void and of no effect and that the assets conveyed and the transferee entities are property of the bankruptcy estate.

AND IT IS SO ORDERED this 12th day of November, 1999 at Columbia, South Carolina.



THE HONORABLE JOHN E. WAITES
UNITED STATES BANKRUPTCY JUDGE



CERTIFICATE OF MAILING
The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below for:

NOV 15 1999

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

JUDY G. SMITH
Deputy Clerk

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